IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.252/2006

Decided on.3.7.2007

Shri Durga Ram **…Petitioner.**

Versus

Union of India and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : Mr. Rahul Mahajan, Advocate.

For the respondents Mr. Sandeep Sharma, Assistant Solicitor General of India.

Rajiv Sharma, J.

The facts which can be culled out from the pleadings of the parties are that the petitioner was enrolled in the Pioneer Corps on 7th October, 1959. He was medically invalided out from service on 13th July, 1962 under items III (iii) Rule 13 of the Army Rules, 1954 with diagnosis "pulmonary tuberculosis". His disability was assessed at 100% from 13th July, 1962. The PPO was issued by the PCDA (P) Allahabad in his favour vide communication dated 6th February, 1963. The Re-survey Medical Boards were convened from time to time and percentage of disability was assessed with effect from 24th May, 1963 to 17th April, 1988. The Re-survey Medical Board of the petitioner was held on 1st January, 1988 due on 18th April, 1988. His disability was reassessed less than 20% (11 to 14%) with effect from 18th April, 1988 for life by Command Hospital, Western Command, Chandigarh. His disability pension was discontinued

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

with effect from 18th April, 1988 being less than 20% (11 to 14%). His appeal was rejected on 5th June, 1990. He was informed on 18th October 2005 vide Annexure P-3 that no PPO has been issued by the PCDA (P) Allahabad for continuation of his disability pension beyond 17th April, 1988 and his case has been sent for clarification to the Record Office and office of PCDA (P) Allahabad. He was also called upon to deposit a sum of Rs. 2,80,272/-.

Mr. Rahul Mahaj, Advocate had strenuously argued that his case is squarely covered by the judgment of the Punjab and Haryana High Court in ***Gurnam Singh Versus Union of India*** reported in 1995 (4) SCT 278.

Mr. Sandeep Sharma, Assistant Solicitor General of India had supported the decision of the authority whereby the disability pension was discontinued after 1988.

I have heard the learned counsel for the parties and perused the record.

It is admitted case of the parties that the petitioner was invalided out of army service on 13th July, 1962 and his disability was assessed at 100%. The Re-survey Medical Boards were convened from time to time and his disability was assessed with effect from 24th May, 1963 to 17th April, 1988. It was for the first time that the Re-survey Medical Board had recommended on 1st January, 1988 that his disability was assessed at less than 20% (11 to 14%).

Mr. Sandeep Sharma submits that the decision to discontinue the pension granted to the petitioner was taken vide letter dated 29th April, 1988. The petitioner had preferred an appeal against the same, which was dismissed by the appellate authority on 5th January, 1990.

Mr. Rahul Mahajan, Advocate had placed on record copy of letter dated 23rd December, 1992 dealing with the disability pension. The

relevant portion of letter dated 23rd December, 1992 is reproduced as under:

> **"There appears to exist some misapprehension that service element will be continued for life even the accepted degree of disablement fall short of 20%. The factual rule position is given below:**
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> **The disability pension constitutes two elements (i) service element and (ii) disability element. The disability element, is payable for a limited period as notified in the pension payment order(s) notified from time to time unless it is notified for life. However, the service element of disability pension is payable for life only in respect of such individuals who were retired/discharged from service or invalided out of service as under:**
>
> **(i) Individuals invalided out of service before 01.03.68 with 10 years or more service.**
>
> **(ii) Individuals invalided out of service on or after 1.3.68 but before 31.12.72 with more than 5 years or more service.**
>
> **(iii) Individuals invalided out of service on or after 1.1.73 with any period of length of service.**
>
> **In view of the above provisions, the pension disbursing authorities in the case of individuals at item (i) and (ii) above shall make payment of service element of disability pension for life only where it is specifically notified by the Controller of Defence Accounts (Pensions) in its Pension Payment Order and in the absence of such specific authorization for life, the service element shall be payable only for the period for which disability element is authorized."**

Mr. Mahajan had submitted that validity of letter dated 23rd December, 1992 had been gone into by the Punjab and Haryana High Court in ***Gurnam Singh Versus Union of India*** reported in 1995 (4) SCT 278. He contended that the Punjab and Haryana High Court had categorically laid down that all the persons, who been have granted the disability pension constitute a homogenous class and could not be

discriminated against for the purpose of disability pension only on the basis of length of service. He had further elaborated his submission by stating that as per letter dated 23.12.1992 the persons enrolled after 1.1.1973 are granted the pension even if their disability has become less than 20% but the persons who had been invalided out in the year 1962 are required to put in minimum 10 years of service. The Punjab and Haryana High Court has held that the persons, who are recruited before 1.1.1973 are to be treated at par with those persons, who have been recruited after 1.1.1973 for the purpose of payment of disability pension.

The Punjab and Haryana High Court has held in ***Gurnam Singh Versus Union of India,*** 1995 (4) SCT 278 as under:

> **"From the documents which have been placed on record, it is clear that the petitioner was discharged from the military service on the ground of low medical category. He was given medical category 'EEE' at the time of discharge from the service. Annexure P-2 is conclusive proof of the fact that the petitioner was given disability pension. This disability pension must have been given to the petitioner on fulfillment of the conditions enumerated in Regulations 173 of the Pension Regulations. By virtue of order (Annexure P-5) the Government of India took a policy decision to extend the benefit of the disability pension to the Army personnel below the officer rank who were granted disability pension at one time but whose disability fell below 20 per cent at a later stage. Annexure P-6 contains similar instructions regarding the grant of disability pension of those whose disability falls below 20%. However, the instructions contained in Annexure P-6 have been made applicable only to those who were on the effective strength of the Army on 1.1.1973. If the petitioner has been discharged from the service after 1.1.1973, he would have become entitled to the grant of disability pension notwithstanding the fact that his disability was subsequently reduced below 20 per cent. Therefore, now it has to be seen whether the restricted application of the instructions**

contained in Annexure P-6 has got any rationality. There can be no manner of doubt that the petitioner was in receipt of the disability pension as on 1.1.1973 and he continued to draw the disability pension upto 20.8.1974. Some of the Army personnel who were discharged from service after 1.1.1973 and who were given disability pension after 1.1.1973 were placed at par with the petitioner. With reference to the object of giving the benefit of disability pension to those whose disability fell below 20 per cent, the petitioner and others who were discharged after 1.1.1973 continued one class. With reference to the object aforementioned, there could be no rationales of confining the benefit of the disability pension only to those who were discharged after 1.1.1973. The entire object of extending the benefit of the disability pension even after the reduction of the disability pension even after the reduction of the degree of disability will be frustrated in the cases of the persons like the petitioner, who was actually in receipt of the disability pension on 1.1.1973 but whose disability fell below 20 per cent after 1.1.1973 are denied benefit of disability pension. To me, fixation of the date as 1.1.1973 has absolutely no nexus with the object of granting the disability pension to those who were initially having the disability of 20 per cent or more but whose degree of disability reduced at a later point of time. To this extent the provisions contained in Annexure P-6 are liable to be declared as unconstitutional.

In the result, the writ petition is allowed. The following expression in the order Annexure P-6 is declared ultra vires to Article 14 of the Constitution:-

> **"These orders will take effect from 1st January, 1973 i.e. these will apply to all those who were on the effective strength of the Army on that date and who became non-effective thereafter.**

The respondents are directed to give benefit of the disability pension to the petitioner as had been given to those who have been discharged from the service after 1.1.1973."

In view of the judgment of the Hon'ble Punjab and Haryana High Court, petitioner is entitled to disability pension even if his disability was assessed at less than 20% as per the Re-survey Medical Board convened on 1st January, 1988.

Accordingly the writ petition is allowed. The respondents are directed to give benefit of disability pension to the petitioner as has been granted to those who have been discharged from service after 1.1.1973 with effect from 8th April, 1988 onwards and the respondents are directed not to effect any recovery from the pension already paid to him from 1988 to 2005. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 3, 2007
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